United Nations S/2003/700

Security Council

Distr.: General
11 July 2003

Original: English

Letter dated 8 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/443).

The Counter-Terrorism Committee has received the attached third report from Paraguay submitted pursuant to paragraph 6 of resolution 1373 (2001).

I should be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-42967 (E) 240703 250703

Annex

[Original: Spanish]

Letter dated 3 July 2003 from the Permanent Representative of Paraguay to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit the following supplementary information in reply to your letter dated 4 April 2003, regarding the report submitted by the Government of Paraguay to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001).

(*Signed*) Eladio **Loizaga**
Ambassador
Permanent Representative

Appendix

Supplementary report of Paraguay to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001)*

1. Implementation measures

1.1 The Counter-Terrorism Committee (CTC) has agreed on further questions and comments for the consideration of the Government of Paraguay with regard to the implementation of the resolution, as set out in this section.

1.2 The effective implementation of paragraph 1 (b) of the resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds be actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place;**
- **The funds are of a legal origin.**

It is stated on page 5 of the supplementary report of Paraguay that the Congress has postponed consideration of the anti-terrorist act referred to in paragraph 165 of the first report, some of the provisions of which were relevant to the implementation of paragraph 1 (b). It is stated in reply to paragraph 3 (c) in the supplementary report (page 12) that Paraguay is in the process of ratifying the International Convention for the Suppression and Prevention of the Financing of Terrorism. In view of the postponement of the consideration of the bill by Congress, could Paraguay please inform the CTC as to when the anti-terrorism act will be reintroduced and whether it will take concrete steps to assuage fears that the new law could be misused to infringe on civil rights?

Consideration of the bill has been postponed sine die in the Chamber of Senators. As soon as consideration resumes, the CTC will be so informed.

1.3 Paragraph 1 (c) requires States to freeze without delay funds and financial assets or economic resources of individuals and entities, whether resident or non-resident, held in Paraguay, who commit or attempt to commit or facilitate or participate in, the commission of terrorist acts either inside or outside the territory of Paraguay. It seems, from the reply given in paragraphs 14 to 16 of the first report, that freezing can be done on the

* Annexes are on file with the Secretariat and are available for consultation.

orders of the judicial authorities, only to preserve assets, objects or instruments relating to the offence characterized, probably in the money-laundering law (art. 36). Could Paraguay please explain whether it is possible to freeze the resources as required by subparagraph (c) even though no crime would have been actually committed inside or outside Paraguay, and the resources may be of legal origin, but suspected to have terrorist links.

The Paraguay Penal Code contains no legal definition for the freezing of funds. However, it does provide for: *embargo*, which is a precautionary measure used to attach the property of an accused person in order to compensate for damage arising from the offence; and *comiso*, which is the seizure of property instrumental to or resulting from the offence, provided that such property is dangerous to the community or could be used to carry out other punishable acts. Both cases require an accusation against an individual for a punishable offence, a procedure which is carried out by a public prosecutor. After the accusation is submitted to the criminal court judge dealing with civil rights guarantees, the Office of the Public Prosecutor requests the attachment or seizure of the property.

Money-laundering is a criminal offence and therefore is automatically prosecuted. The investigation is conducted by the Office of the Public Prosecutor in conjunction with criminal judges competent to deal with civil rights guarantees and monitor investigations, and familiar with the decisions of a jurisdictional nature that must be taken during the preparatory stage; during the trial and verdict in the intermediate stage; and during the trial and verdict under the abbreviated procedure (art. 42 "Competent courts" and arts. 301 and 302 "Indictment and accusation" of the Code of Penal Procedure).

1.4 It is not clear from the reply to paragraph 1 (d) that the current laws provide for reporting obligations on professions engaged in financial transactions, of suspicious transactions as required in article 18 of the International Convention for the Suppression of the Financing of Terrorism, which is under a process of ratification in Paraguay. Could Paraguay please explain the current reporting obligations if any for professions engaged in financial transactions. If there are no reporting obligations for these professions, what steps does Paraguay propose to take in this regard?

In order to identify persons carrying out such transactions, resolution 245/97 of 11/06/97 of the Superintendence of Banks, which is an agency of the Central Bank of Paraguay, provides for the use of an obligatory transaction report for the entities enumerated in article 1 of resolution 2, Act 84 of 02/05/97 of the Board of Directors of the Central Bank of Paraguay. Attached to the resolution is a model form for that purpose. It is required for all active, passive and contingent transactions amounting to over US$ 10,000 or its equivalent in guaranies or other currency, unless excluded under the terms of Act 1015. It is also required for active, passive or contingent transactions in smaller amounts when they have been carried out during the course of one day and could be inferred to be parts of a transaction whose total value is greater than the amount indicated above.

1.5 For the effective suppression of the financing of terrorism it is necessary to take measures that would ensure that religious, educational, cultural and other non-governmental associations are registered and their

accounts are audited so as to prevent the diversion of their funds and assets for other than intended purposes in particular to terrorist activities. From what is stated in the supplementary report in the reply to this question, it seems that the current laws do not cover this requirement. The CTC would be grateful to know the intentions of Paraguay in this regard.

In the draft bill amending Act 1015 "on preventing and penalizing unlawful acts to launder money or property", consideration is being given to broadening the range of subjects covered thereby, even though article 11n of the Act currently in force includes: "any other natural or legal person who regularly acts as a financial intermediary, trades jewels, precious stones or metals, art objects or antiques, or invests in stamps or coins".

1.6 Paragraph 2 (a) of the resolution requires States to specifically suppress recruitment of members of terrorist groups which would include recruitment for terrorist groups inside or outside the territory of Paraguay. Could Paraguay please explain whether the Penal Code of Paraguay or any other law provides for this requirement. If not could Paraguay please inform the CTC as to what steps it proposes to initiate in this regard.

Terrorism per se is not a punishable offence under Paraguayan penal law. However, there is a penal definition for criminal association (art. 239 of the Penal Code), the text of which follows:

1. Anyone who:

1. Creates an association which has a hierarchical structure or is organized in any way with the intention of committing punishable offences;

2. Is a member of such an organization or participates in it;

3. Supports it economically or provides it with logistical support;

4. Provides services to it; or

5. Promotes it,

shall be punished by up to five years' imprisonment.

2. In such cases, attempts are also punishable.

3. When the participant's offence is minor or his contribution was secondary, the court may waive the penalty.

4. The court may also impose a lighter sentence in accordance with article 67, or waive it, when the perpetrator:

1. Attempts, voluntarily and diligently, to prevent the continuation of the association or the commission of a punishable act in accordance with its objectives; or

2. Informs the competent authorities of his knowledge of punishable offences, or of plans to commit such offences, in time to prevent them from being carried out.

For the penal definition "criminal association" to apply, the existence of an organization with a hierarchical structure whose objective is to commit punishable

acts must be established. Once the existence of such an association is known, the conduct which subparagraphs 2, 3, 4 and 5 of paragraph 1 specify can be punished.

1.7 Could Paraguay explain together with an outline of the legal provisions that enable the authorities in Paraguay to prevent and criminalize the use of Paraguayan territory for purposes of financing, planning, supporting or facilitating or committing terrorist acts aimed at other States.

The preliminary draft of the anti-terrorist Act provides the requisite definition; the Code of Penal Procedure, however, establishes provisions aimed at preventing criminal offences. In this sense, articles 197 et seq., which refer to punishable acts against the natural basis for human life, punishable acts against the security of persons, punishable acts jeopardizing the security of persons in transit, and punishable acts against the operability of essential infrastructure, may apply.

1.8 Could Paraguay please explain together with an outline of the legal or administrative provisions it has in place, how it provides assistance to States making a request in the matter of criminal investigation or judicial proceedings, as required by paragraph 2 (f) of the resolution? The CTC would be grateful to have a list of any bilateral or multilateral agreements that Paraguay may have entered into with other States.

Assistance to other States is arranged through letters of request. The scope of reciprocity is broad, and communications can be exchanged pursuant to any treaties or conventions to which the States are parties. The relevant provisions of the Code of Penal Procedure are found in articles 146 to 150 (Foreign authorities and extradition) and are without prejudice to any international agreements concluded, a list of which appears below.

In order to respond to requests from other States, Paraguay has become a party to the following instruments, which are fully in force.

a. *Multilateral agreements in criminal matters*

Within the framework of the United Nations

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents
- Rome Statute of the International Criminal Court

Within the framework of the Organization of American States

- Inter-American Convention on Letters Rogatory
- Additional Protocol to the Inter-American Convention on Letters Rogatory
- Inter-American Convention on Proof of and Information on Foreign Law
- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards
- Inter-American Convention on the Taking of Evidence Abroad

Within the framework of other bodies

- Treaty on International Procedural Law (1889)
- Treaty on International Penal Law (1889)

- Treaty on International Procedural Law (1940)
- Treaty on International Penal Law (1940)

b. *Bilateral agreements on judicial cooperation in criminal matters*: Venezuela (1996), Peru (1996), France (1997), Colombia (1997), Costa Rica (1997), Ecuador (1997) and Spain (1997).

c. *Bilateral agreements on the transfer of sentenced persons*: Spain (1994), Argentina (1995), France (1997), Brazil (2000), Bolivia (2000), Peru (2001) and Costa Rica (2001).

d. *Bilateral extradition treaties*: Germany (1909), Brazil (1922), Chile (1897), Austria-Hungary (1907), Belgium (1926), China (1968), Spain (1998), United States (1998), Great Britain (1908), Italy (1997), Switzerland (1906), Uruguay (1940), Argentina (1996), Korea (1996), France (1997) and Australia (1997).

1.9 Paraguay has stated in the supplementary report (page 11) that because of its length the border is porous and vulnerable to illegal crossings. The CTC would be grateful to know of any new steps that Paraguay is contemplating in order to secure its borders from illegal crossings.

Paraguay has enacted the following measures:

a. Strengthening control over the area of western Chaco, where regional offices have been set up.

b. Installation of 11 wireless-in-local-loop antennas and of the National Migration Control System (SINACOM) at border posts for migrants.

c. The Ministry of Foreign Affairs is working with the International Organization for Migration and the United Nations Population Fund on the formulation of a migration policy.

It should also be noted that the National Anti-Drug Secretariat (SENAD), the institution responsible for implementing and ensuring the implementation of the national anti-drug policy, is made up of members of the police and the armed forces (providing support), and a specialized civilian staff. SENAD has no airplanes or helicopters of its own; nor does it have a radar system. It also does not have a coast guard unit or sufficient teams with which to control river traffic. Lastly, Paraguay shares a land border measuring approximately 360 kilometres with Brazil, and another measuring approximately 870 kilometres with Bolivia. It has regional offices positioned at strategic points along those land borders, which are equipped with teams and weapons far inferior to those of the enemy.

In order to alleviate those problems, SENAD is carrying out measures in conjunction with the Brazilian Federal Police authorities, in an operation known as Alianza, which has resulted in the destruction of thousands of hectares of marijuana and the capture of major drug traffickers. This operation has been under way since 1999.

The National Anti-Drug Strategy (1999-2003) and the National Anti-Drug Plan (2001-2005) are also in the process of implementation; information about these programmes is available at the following web site: www2.paraguaygobierno.gov.py/senad.

1.10 The CTC would be obliged to have a progress report on the process of ratification of the Conventions and Protocols relating to terrorism which it has already signed. Please also explain how the Conventions and the Protocols will be implemented and in particular what penalties will be attached to the relevant offences of the Conventions and Protocols.

All such terrorism agreements are currently before the National Congress, pending ratification. On adoption they will become an integral part of the national legal apparatus, and shall be applicable in their entirety; in some cases, a legal framework for their application will need to be developed. Attached to this document is a chart showing the current status of the international instruments relating to terrorism.

1.11 The CTC is aware that Paraguay may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Paraguay's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.

In its capacity as a member of the Organization of American States, Paraguay actively participates in the work of the Inter-American Committee against Terrorism. It has submitted a country report for 2002, which is annexed to this document.